Committee on Resources,

Subcommittee on Energy & Mineral Resources

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U.S. House of Representatives, Washington, D.C. 20515-6208 - - (202) 225-9297

Subcommittee on Forests & Forest Health

forests - - Rep. Scott McInnis, Chairman
U.S. House of Representatives, Washington, D.C. 20515-6205 - - (202) 225-0691

Witness Statement

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Written Testimony
provided for the
Joint Oversight Hearing on Energy Impacts of the Roadless Rule
United States House of Representatives, Committee on Resources
Subcommittee on Energy & Mineral Resources
Subcommittee on Forests & Forest Health
Wednesday, April 4, 2001, 1:30 pm
1324 Longworth House Office Building,
Morris K. Udall Hearing Room
Washington, D.C.

I would like to thank Chairwoman Cubin and the members of the subcommittees for inviting me to testify here today. It is an honor to appear before you as the chief legal officer of the State of Idaho to speak about an issue that is extremely important to the citizens of Idaho.

It is my understanding that this hearing focuses on the effect of the Roadless Area Conservation Rule on this nation's energy resources. The State of Idaho does indeed have significant concerns about the roadless rule and its effect on Idaho's economy. The most immediate economic concern of the State of Idaho relates to our endowment lands which are contiguous to or surrounded by the roadless areas. The endowment lands must be managed by the Idaho State Board of Land Commissioners (Land Board) for the benefit of Idaho's public schools. The State of Idaho has 9.3 million acres of inventoried roadless areas, and the Forest Service has not yet told the State how many acres of uninventoried areas in Idaho would qualify as roadless. I also understand that the subcommittees are particularly interested in the reasons why the State of Idaho has filed a lawsuit against the roadless rule.

As a threshold matter, let me make clear that Idaho's legal case focuses on the process followed by the United States Department of Agriculture in proposing and implementing the roadless rule. The National Environmental Policy Act (NEPA) is a procedural law, requiring certain steps be followed by federal agencies. The process followed by the Department of Agriculture in adopting the roadless rule wholly ignored the procedural requirements of NEPA.

The State of Idaho, through the Idaho State Board of Land Commissioners, which is bipartisan and composed of five statewide elected constitutional officers, unanimously agreed to file two lawsuits against the roadless initiative. The first lawsuit was filed on December 30, 1999, during the NEPA process and shortly after the scoping period expired. The second lawsuit was filed on January 9, 2001, shortly after completion of the NEPA process and adoption of the rule. The second lawsuit is currently pending in the United States District Court for the District of Idaho.

From the beginning, the State of Idaho was concerned with the short timeframes and information provided for public notice and comment. Moreover, when those concerns are considered in the context of a NEPA proposal of such historic scope, impacting 58.5 million acres nationwide, the quality of the public notice and comment provided rises to the level of a legal deficiency. As you know, NEPA was enacted to ensure fully informed and well-considered decisions on proposed actions with environmental consequences. In other words, public notice and comment must be "meaningful" in order to comply with NEPA.

The roadless rule was first announced by former President Clinton on October 13, 1999, at which time he characterized it as "one of the largest land preservation efforts in America's history." Just six days later, the Department of Agriculture initiated the scoping period by publishing a notice of intent to prepare an environmental impact statement. The fanfare surrounding the announcement also included Forest Service Chief Dombeck's October 28, 1999, letter to Forest Service employees, wherein he characterized the roadless proposal as an "urgent" need and stated that the agency "cannot afford to waste a single day."

The public was given only sixty (60) days to comment during scoping. Public meetings were scheduled in Idaho starting just twelve (12) business days and ending just three (3) business days before the end of scoping. Requests for an extension of the scoping period from Idaho Governor Kempthorne and from myself and six (6) other western Attorneys General were ignored. A Freedom of Information Act (FOIA) request sent by my office for pertinent information was also ignored. Meanwhile, the Forest Service's touted website for public access and information on the roadless proposal was, by and large, totally useless during the entire scoping period. Finally, despite the fact that this proposal was a land management proposal, no accurate, site-specific maps were made available to the public, and there were no maps for the uninventoried roadless areas. I would submit that it is not possible to meaningfully comment on a land management proposal when you do not know where the land is located.

Based upon the lack of any responses to our extension request letters and FOIA request, as well as the sheer magnitude of the proposal in Idaho, the Land Board was left with no alternative but to file a lawsuit seeking an order from the court for more information and an extension of the public comment period.

Idaho's first lawsuit was ultimately dismissed due to the fact that the federal courts lack power to hear NEPA cases before the entire NEPA process is final. However, the court's order contained a rather ominous warning to the Forest Service. Please allow me to read from the court's February 18, 2000, decision:

While the Court has determined it lacks subject matter jurisdiction over the State's Complaint at this point, the Court would be remiss if it failed to emphasize to the Forest Service that due to the historic magnitude of

the proposed action, the agency's final action will undoubtedly be subject to close judicial scrutiny. As stewards of the federal funds being expended to complete the NEPA process on the proposed action, the Forest Service should make every effort to ensure that the process is properly implemented with reasonable time frames to allow meaningful participation by the public. It appears at least arguable to this Court that the Forest Service may be inviting error and a necessary review of its actions by ignoring the objections of the Plaintiffs for a meaningful scoping process.

Counsel for the Forest Service do not dispute that the purpose of the scoping process is to identify issues that are substantive and eliminate issues that are not so as to instill confidence and trust in the process. A central purpose of the NEPA process is to provide full disclosure of relevant information to allow meaningful public debate and oversight. When the areas contemplated to be roadless are not defined or shown by way of maps or otherwise illustrated, one does not have to be learned in the law to determine the public's participation will hardly be "meaningful." The State's concern over access to and management of its endowment and state forest lands that may be surrounded by national forest land are legitimate concerns of state and local governments and its citizens.

The sheer magnitude of this governmental action involving 40 to 60 million acres nationwide that precipitated 500,000 comments in sixty days is the best evidence the Forest Service should proceed with caution. Time is not of the essence on an issue that has been studied for over 30 years. The public needs to be informed in order to meaningfully participate. An argument suggesting the Court is required to give due deference to agency action and expertise is likely to ring hollow unless the Forest Service does what it says it will do and that is give due consideration to new comments and issues that may be raised both during the draft EIS comment period as well as at the time the final EIS is issued.

Despite the court's warnings, the Forest Service continued to press forward with inadequate information and artificially short deadlines for public comment. The draft environmental impact statement was issued on May 10, 2000, and the public comment period was set at a meager 69 days. Once again, Idaho's requests for extension of the comment period were denied. We still had no accurate maps for inventoried areas and no maps for the uninventoried areas. The public meetings in Idaho were once again set near the end of the comment period. In a letter we received from the Forest Service, Governor Kempthorne and I were told that no maps or mapping criteria existed or were planned for the uninventoried areas.

The final environmental impact statement was issued on November 13, 2000, approximately one (1) year and one (1) month after this massive proposal was first announced. In anticipation of the adoption of the final rule, the Land Board provided additional comment and requested a face-to-face meeting with Secretary Glickman and Chief Dombeck. Once again, Idaho's concerns and the request for a face-to-face meeting were never even acknowledged.

Throughout this process, Idahoans have felt "stiffed" by the federal government. What should have been an open process with meaningful information and dialogue was fairly perceived as a sham process designed to reach a pre-determined outcome before a political deadline. Moreover, it is an insult to the elected officials and others who attempted to participate, requested basic and highly relevant information, and pled for additional time to comment on such a massive policy proposal, that we were simply ignored. This is not a good way to do business, particularly with the states that contain the most land impacted by the roadless rule, and it is why the State of Idaho will continue to move forward in the second lawsuit it filed on January 9, 2001.

With respect to energy and mineral exploration, many Idahoans have expressed concern with the substance

of the roadless rule. I know that the new Administration is working on a comprehensive national energy policy, which I commend and recognize as clearly necessary for our future energy needs and economic well being.

The roadless rule is a one-size-fits-all national policy, which constitutes a significant departure from site-specific planning and multiple use. Therefore, while Idaho is not currently an oil or gas producer, it will feel the impact of restrictions imposed on other states.

Idahoans are often asked to pay higher prices for gasoline, and we are told that the reasons are supply related, including pipeline capacity and geographical isolation. The final environmental impact statement details the adverse impacts on energy and mineral exploration and production.

In Idaho, phosphate mining in the Caribou National Forest will be substantially impacted. Table 3-68 of the FEIS estimates an annual economic impact of 10.4 million dollars in direct labor income, 38.5 million dollars in total labor income, 185 direct jobs, 976 total jobs, and 1.3 million dollars in payments to the State of Idaho.

Once again, I want to thank the subcommittees for inviting me to testify here today. Idaho will continue to press forward with its lawsuit. The State of Colorado has filed an *amicus* brief in support of Idaho. Alaska has also filed a lawsuit. Idaho, Colorado, and Alaska contain almost 49% of the total inventoried roadless areas subject to the roadless rule. It is my understanding that several other western states are contemplating lawsuits or preparing to file lawsuits against the roadless rule. I will keep you apprised of any significant developments during the litigation.

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